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March 27, 1998

Via Hand-Delivery

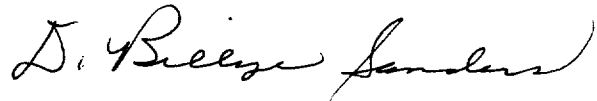
K. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Re: BellSouth Telecommunications, Inc.'s Entry into Long Distance  
(interLATA) Service in Tennessee pursuant to Section 271 of the  
Telecommunications Act of 1996; Docket No. 97-00309

Dear Mr. Waddell:

Enclosed you will find the original and thirteen (13) copies of the Direct Testimony of TCG MidSouth, Inc. to be filed in this docket.

Sincerely,



D. Billye Sanders

DBS:lmb  
w/Enclosures

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**STATE OF TENNESSEE  
BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

**IN RE: BELL SOUTH )  
TELECOMMUNICATIONS, )  
INC'S ENTRY INTO LONG )  
DISTANCE (INTERLATA) )  
SERVICE IN TENNESSEE )  
PURSUANT TO SECTION 271 )  
OF THE TELECOMMUNICATIONS )  
ACT OF 1996 )**

**Docket No. 97-00309**

**DIRECT TESTIMONY OF  
PAUL KOUROUPAS**

**Q. Please state your name, address and business affiliation.**

**A.** My name is Paul Kouroupas. I am Vice President, Regulatory and External Affairs for Teleport Communications Group, Inc. My business address is 2 Lafayette Center, 1133 21st Street, N.W., Suite 400, Washington, D.C. 20036.

**Q. On whose behalf are you testifying?**

**A.** I am testifying on behalf of Teleport Communications Group's Tennessee affiliate TCG MidSouth, Inc. ("TCG").

**Q. Please summarize your background and experience.**

**A.** I have worked for TCG for over five years, representing TCG before state public utility commissions throughout the country. For the past three years, I have been responsible for negotiating and overseeing the implementation of interconnection agreements with incumbent local exchange carriers ("ILECs"), including BellSouth, both prior to and subsequent to the passage of the federal

1 Telecommunications Act of 1996 (“Act”). I graduated from Temple University in  
2 Philadelphia, Pennsylvania with a Bachelor’s degree in Communications. I also  
3 graduated from the Catholic University of America’s Columbus School of Law  
4 with a Juris Doctorate degree and a specialty in Communications Law.

5 **Q. Have you testified previously before the Tennessee Regulatory Authority?**

6 **A.** Yes. I presented testimony on TCG’s behalf in Docket No. 97-00049, TCG’s  
7 application for certification as a competitive local exchange carrier (“CLEC”).

8 **Q. What is the purpose of your testimony?**

9 **A.** The purpose of my testimony is to explain the reasons why TCG believes  
10 BellSouth’s Petition is deficient and therefore should be rejected by the TRA.  
11 BellSouth’s Petition is deficient for the following reasons: (1) BellSouth failed to  
12 provide any data supporting their claim that they are in compliance with Checklist  
13 item (i); (2) BellSouth attempts to impose an impermissible restriction upon the  
14 application of rates for transport and termination in violation of Checklist item  
15 (xiii); and (3) BellSouth has reneged on its contractual obligations by refusing to  
16 pay transport and termination rates for traffic terminated to internet service  
17 providers in violation of Checklist item (xiii).<sup>1</sup>

18 **Checklist Item (i)**

19 **Q. Please explain the requirements, as you understand them, of Checklist Item**  
20 **(i) under Section 271.**

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<sup>1</sup> My silence on a checklist item should not be construed to suggest that TCG believes that the checklist item has been satisfied by BellSouth.

1     **A.**     Checklist Item (i) requires BellSouth to provide “interconnection in accordance  
2             with the requirements of Section 251(c)(2) and 252(d)(1).” Section 251(c)(2)  
3             imposes upon BellSouth, *inter alia*, “[t]he duty to provide, for the facilities and  
4             equipment of any requesting telecommunications carrier, interconnection with the  
5             local exchange carrier’s network that is at least equal in quality to that provided by  
6             the local exchange carrier to itself or to any subsidiary, affiliate, or any other party  
7             to which the carrier provides interconnection. . .” Section 252(d)(1) establishes a  
8             pricing standard for interconnection services. I will focus my testimony on the  
9             requirement of Section 251(c)(2).

10            BellSouth fails to satisfy the requirements of Section 251(c)(2) because their  
11            Petition is devoid of any factual data which would support a finding that the  
12            interconnection services it provides are at a level of quality required by Section  
13            251(c)(2). That is, BellSouth has not demonstrated that the interconnection  
14            services it provides to its competitors are at least equal in quality to the  
15            interconnection services it provides itself or its affiliates.

16     **Q.**     **What would be required of BellSouth to demonstrate its compliance with this**  
17             **Checklist Item?**

18     **A.**     I think it is widely recognized that BellSouth needs to produce monthly reports  
19             which include the data necessary to allow the TRA to conclude that in fact  
20             BellSouth has met its requirements under the Act. For example, in BellSouth’s  
21             Section 271 proceeding in Florida, the Public Service Commission rejected  
22             BellSouth’s proposed performance measures. Instead, the Florida PSC required  
23             more extensive measures “that are clearly defined, permit comparison with

1 BellSouth retail operations, and are sufficiently disaggregated to permit  
2 meaningful comparison.”<sup>2</sup>

3 **Q. Are you aware of the workshop the TRA hosted concerning this issue on**  
4 **March 22-23, 1998?**

5 **A.** Yes, in fact I was in attendance at the workshop.

6 **Q. Did the parties reach a consensus on the need for performance reports as**  
7 **you described them?**

8 **A.** Yes. I believe all parties, including BellSouth, agree that monthly performance  
9 reports are necessary.

10 **Q. If a consensus was reached, why is this still an issue?**

11 **A.** While consensus was reached regarding the need for performance reports, no  
12 consensus was reached regarding the details of the reports. For instance, parties  
13 remain divided over what specific measures need to be reported. Additionally,  
14 parties remain divided on the extent of granularity required to make the reports  
15 meaningful.

16 **Q. What measures does TCG believe need to be reported?**

17 **A.** TCG is generally supportive of the measures developed by the Local Competition  
18 Users Group (“LCUG”). However, TCG believes a more limited number of  
19 measures can be utilized initially if there is a process in place which would allow  
20 additional measures to be added as the nature and extent of the interconnection  
21 relationship evolves. That is, a set of measures could be agreed to today which

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<sup>2</sup> In re: Consideration of BellSouth Telecommunications, Inc.’s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996, Florida PSC Order No PSC-97-1459-FOF-TL at 185 (Nov. 19, 1997).

1 would capture the majority of critical functions being performed by BellSouth for  
2 its competitors. However, as the competitors increase the quantity and scope of  
3 interconnection with BellSouth, additional measures will be required to determine  
4 if BellSouth is providing these broader interconnection services in compliance  
5 with Section 251(c)(2). If the TRA has in place a process by which these  
6 additional measures could be rapidly adopted on an “as-needed” basis, then it is  
7 not necessary to ensure that all the proper measurements are in place today.

8 **Q. Does TCG have a proposed list of measures which it believes could be**  
9 **adopted immediately?**

10 **A.** As state above, while TCG is generally supportive of the LCUG measures, TCG  
11 believes the measures attached hereto as Exhibits 1 (which were filed with the  
12 TRA on March 13, 1998) are more appropriate for TCG’s needs at this time.  
13 These measurements should be provided for the following: individual CLECs  
14 (e.g., performance provided by BellSouth to TCG MidSouth, Inc.); CLECs in the  
15 aggregate; the top three interexchange carriers; BellSouth’s top 100 customers;  
16 BellSouth’s retail customers; and BellSouth’s affiliates (including its CLEC  
17 affiliate). These reports should be disaggregated by rate center in most incidences  
18 to provide a fair and accurate “apples to apples” measurement of performance.  
19 These performance measures should be revised and expanded over time as CLECs  
20 and ILECs gain more experience with interconnection and new technologies and  
21 services are introduced. At the request of the TRA staff, TCG is currently  
22 negotiating performance measures with BellSouth.



1       **Q.     Please explain the “extent of granularity” you mentioned above.**

2       **A.**     The extent of granularity refers to the extent to which BellSouth will disaggregate  
3               the data so as to make it meaningful. BellSouth has proposed that all data should  
4               be reported on a state-wide level. TCG, and the other parties, do not believe that  
5               the data will be particularly useful at that level and request that the data be  
6               reported on a more granular basis, perhaps by central office district or county  
7               level.

8       **Checklist item (xiii)**

9       **Q.     You identified two concerns with regards to Checklist item (xiii). Please**  
10           **explain your first concern with regards to the restriction imposed by**  
11           **BellSouth upon the application of rates for transport and termination.**

12       **A.**     Checklist item (xiii) requires BellSouth to implement “reciprocal compensation  
13               arrangements in accordance with the requirements of section 252(d)(2).” Section  
14               252(d)(2) establishes the pricing standard for rates for transport and termination  
15               (or reciprocal compensation). The pricing standard applies to “calls that originate  
16               on the network facilities of the other carrier.” BellSouth unilaterally seeks to  
17               restrict the application of this pricing standard to calls which BellSouth  
18               determines to be “local”. TCG believes this is contrary to the explicit language of  
19               the Act, to the spirit and intent of the Act, and contrary to the public interest.

20       **Q.     How is BellSouth’s proposed restriction contrary to the Act?**

21       **A.**     As I stated above, Section 252(d)(2) establishes a pricing standard to be applied to  
22               “calls that originate on the network facilities of the other carrier.” However,  
23               BellSouth witnesses Keith Milner (§. 63-65) and Alphonso Varner (§. 107-8)

1        assert that the rates for transport and termination apply only to calls which  
2        BellSouth determines to be “local” in nature. Under BellSouth’s view, transport  
3        and termination charges for calls which BellSouth considers to be “toll” would not  
4        be subject to rates for transport and termination notwithstanding the fact that the  
5        calls “originate on the network facilities of the other carrier.” BellSouth offers no  
6        explanation for its position, but it is clearly contrary to the plain language of the  
7        Act.

8        In its testimony, BellSouth has presumed that the rates for transport and  
9        termination apply only to traffic which BellSouth determines to be “local”.<sup>3</sup>  
10       BellSouth’s attempt to restrict the application of rates for transport and  
11       termination to what it considers to be “local” calls flies in the face of the plain  
12       language of the Act and cannot be considered proper. In the Act, Congress drew a  
13       sharp distinction between the circumstances in which reciprocal compensation  
14       and access charges are to apply. As the FCC observed, Congress intended that  
15       access charges apply where three carriers are involved in completing a call -- the  
16       originating local exchange carrier (“LEC”), an interexchange carrier (“IXC”), and  
17       the terminating LEC. In that case, the IXC compensates the two LECs for  
18       providing originating and terminating service. “By contrast, reciprocal

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<sup>3</sup>        For those calls which BellSouth determines to be “toll”, BellSouth seeks to impose traditional Feature Group D switched access charges.

1 compensation for transport and termination of calls is intended for a situation in  
2 which two carriers collaborate to complete a local call.”<sup>4</sup>

3 **Q. Why do you believe that BellSouth’s position is contrary to the spirit and**  
4 **intent of the Act?**

5 **A.** The primary purpose of the Act is to promote the broad development of facilities-  
6 based local exchange competition. While the Act addresses three general avenues  
7 for market entry -- resale, use of unbundled network elements, and  
8 interconnection of competing networks -- clearly facilities-based competition is  
9 the *sine qua non* of the Act. After all, the ability of BellSouth to enter into the  
10 interLATA market hinges upon the presence of facilities-based competition.

11 Restrictions such as the one proposed by BellSouth on the application of Section  
12 252(d)(2) are contrary to the spirit and intent of the Act because they seek to deny  
13 facilities-based competitors the benefits of their facilities. For instance, TCG has  
14 networks in Chattanooga and Nashville. If a TCG customer originates a call in  
15 Chattanooga that is destined for a customer of BellSouth in Nashville, and TCG  
16 transports the call to Nashville for termination to BellSouth in Nashville, the rate  
17 that TCG pays BellSouth for terminating that call should be governed by the  
18 pricing standard established in Section 252(d)(2). BellSouth’s costs for  
19 terminating TCG’s traffic do not vary depending upon where TCG originates the  
20 call. When TCG hands the call off to BellSouth in Nashville, it should be

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<sup>4</sup> Implementation of the Local Competition Provisions in the  
Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499,  
16013-15 (1996), at paras 1034-1038 (emphasis added). The FCC correctly found  
support for this conclusion in Section 252(d)(2)(A)(I).

1 irrelevant whether that call originated in Nashville (thus constituting a “local” call  
2 according to BellSouth) or in Chattanooga.

3 BellSouth should not be permitted to artificially raise TCG’s costs for terminating  
4 traffic based upon an arbitrary and unilateral determination by BellSouth as to  
5 whether a call is “local” or not. This principle is critical to the ability of facilities-  
6 based competitors to remain cost-competitive with BellSouth in the intraLATA  
7 toll market and, eventually, in the interLATA toll market. Since BellSouth is able  
8 to originate and terminate intraLATA toll (and eventually interLATA toll) calls at  
9 its own cost, other facilities-based competitors must have that same ability.  
10 BellSouth’s proposed restriction on the application of the Section 252(d)(2)  
11 pricing standard would artificially raise TCG’s cost of terminating traffic and  
12 place TCG at a competitive disadvantage vis-a-vis BellSouth.

13 **Q. Why do you believe that BellSouth’s position is contrary to the public**  
14 **interest?**

15 **A.** BellSouth’s proposal to restrict the application of rates for transport and  
16 termination to calls which it determines to be “local” is a bald attempt by  
17 BellSouth to retain its dominance over the local exchange market by dictating to  
18 the competing local exchange carriers (“CLECs”) their retail calling plans and  
19 stifling the innovative services expressly envisioned by the Act. Any attempts by  
20 BellSouth to export its practice of segmenting traffic to its competitors  
21 jeopardizes the benefits which can accrue to consumers in a competitive market  
22 place.

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1 Today, consumers have one choice for calling: BellSouth. BellSouth dictates to  
2 consumers which of their calls are “local” and which are “toll”. One of the  
3 expected benefits of local exchange competition is that consumers will soon  
4 realize multiple options for calling. That is, consumers will have available to  
5 them different calling plans which more closely match their calling habits.  
6 CLECs will not be able to compete with BellSouth on this level if BellSouth’s  
7 proposal to apply the rates for transport and termination only to calls that it  
8 determines are “local” is upheld. Just as BellSouth’s “local” calling areas  
9 historically developed from the location and capabilities of BellSouth’s central  
10 offices coupled with historical consideration of communities of interest, CLECs  
11 have different central office locations and capabilities and their customers have  
12 equally legitimate communities of interest which must be recognized.

13 If BellSouth prevails in its position, CLECs will be faced with the potential of  
14 having to terminate calls to BellSouth which the CLEC rates as “local” to its  
15 consumers, at the rate BellSouth charges for “toll” call termination. This will  
16 place CLECs in a “price squeeze” and force them to offer calling plans to  
17 consumers which are identical to those offered by BellSouth. This sort of “lock  
18 step” action on the part of CLECs certainly was not contemplated by the Act.

19 BellSouth’s scheme is designed to ensure that CLECs must play “follow the  
20 leader” when they enter the Tennessee local exchange market. Local exchange  
21 competition as envisioned under the Act is not meant to be a game of “follow the  
22 leader”. Instead, it is the responsibility of the TRA to ensure that CLECs have the

1 tools necessary to vigorously compete with BellSouth and that there exist no  
2 artificial barriers to TCG's operations.

3 **Q. Please explain why you believe BellSouth is in violation of checklist item (xiii)**  
4 **for its refusal to pay transport and termination rates for traffic terminated to**  
5 **internet service providers.**

6 **A.** BellSouth witness Varner (§. 108-09) takes the position in his testimony that the  
7 rates for transport and termination established under Checklist item (xiii) do not  
8 apply to traffic terminated to internet service providers ("ISPs"). This represents  
9 the second unlawful and unreasonable restriction BellSouth attempts to impose on  
10 the application of the Checklist item (xiii).

11 The specific issue which Mr. Varner refers has recently been brought to the  
12 attention of the TRA via a complaint filed by Brooks Fiber. This issue has  
13 previously been decided by 16 State public utility commissions and two courts.<sup>5</sup>

14 In every instance, the public utility commission and the court have found the  
15 position advocated by BellSouth to be a violation of existing interconnection  
16 agreements, unreasonable, and in some instances anti-competitive.<sup>6</sup> I have  
17 attached to my testimony a copy of a complaint filed by TCG against BellSouth in

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<sup>5</sup> State regulatory commissions decided this issue in: Arizona, Colorado, Connecticut, Delaware (arbitrator), Illinois, Maryland, Michigan, Minnesota, New York, North Carolina, Oklahoma, Oregon, Texas, Virginia, Washington and West Virginia. A federal court in Washington and a state court in Maryland affirmed the commission decisions in those two states.

<sup>6</sup> The position taken by BellSouth witness Varner is the same position every other Regional Bell Operating Company has taken before State public utility commissions.

1 Florida on this very issue. (See Exhibit 2). This complaint explains TCG's  
2 position in greater detail.

3 **Q. Please summarize your testimony.**

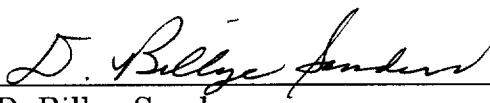
4 **A.** It is TCG's position that BellSouth fails to satisfy the requirements of the Section  
5 271 checklist and therefore their Petition should be rejected by the TRA.  
6 Specifically, TCG believes BellSouth has failed to provide sufficient data to  
7 demonstrate its compliance with Checklist item (i). Also, TCG believes  
8 BellSouth does not comply with Checklist item (xiii) because of the restrictions  
9 BellSouth attempts to impose on the application of Section 252(d)(2). Finally,  
10 TCG believes BellSouth is in violation of Checklist item (xiii) because of its  
11 refusal to pay transport and termination rates for traffic destined to internet service  
12 providers.

13 **Q. Does this conclude your testimony?**

14 **A.** Yes.

Certificate of Service

I, D. Billye Sanders, hereby certify that I have served a copy of the foregoing Testimony of TCG MidSouth, Inc. on the parties of record on the attached service list by depositing a copy of same in the United States Mail, postage prepaid, addressed as shown on such list on this 27<sup>th</sup> day of March, 1998.

  
\_\_\_\_\_  
D. Billye Sanders



## INITIAL PERFORMANCE PARITY MEASUREMENTS

<u>Item No.</u>	<u>Performance Criteria</u>	<u>Unit of Measure</u>
<b>Pre-Ordering</b>		
1	Pre-Ordering Office (SPOC) Access within 20 Seconds	Percentage
2	Pre-Order Information System Availability	Percentage
3	Obtain Service Availability via a System Interface	Seconds
4	Obtain Appointment Schedule via a System Interface	Seconds
5	Obtain Customer Service Record (CSR) via a System Interface	Seconds
<b>Order Provisioning</b>		
6	Order Provisioning Office (SPOC) Access within 20 Seconds	Percentage
7	Order Provisioning Information System Availability	Percentage
8	Average Installation Interval	No. of Days
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
9	FOC Interval	No. of Hrs
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
10	Installation Commitments Met	Percentage
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
11	Installation Desired Due Date Met	Percentage
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
12	Installation New Service Trouble within 7-days of install	Percentage
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	

This initial list of Performance Parity Measurements will have to be supplemented and expanded over time as experience with CLEC-ILEC interconnection grows and new technologies and services are introduced.

# INITIAL PERFORMANCE PARITY MEASUREMENTS

<u>Item No.</u>	<u>Performance Criteria</u>	<u>Unit of Measure</u>
13	Installation Disconnect Commitments Met	Percentage
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
14	Held Orders Compared to Total Orders Placed	Percentage
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
15	Held Orders < 30-Days to Total Orders Placed	Percentage
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
16	Held Orders > 90-Days to Total Orders Placed	Percentage
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
17	Average Held Order Interval to Completion Date	Days
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
18	Customer Affecting Coordinated Conversion Window Violations	Percentage
<b>Maintenance/Repair</b>		
19	Maintenance/Repair Office (SPOC) Access within 20 Seconds	Percentage
20	Maintenance/Repair Information System Availability	Percentage
21	Mean-Time-To-Restore (MTTR)	Hours
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	

This initial list of Performance Parity Measurements will have to be supplemented and expanded over time as experience with CLEC-ILEC interconnection grows and new technologies and services are introduced.

# INITIAL PERFORMANCE PARITY MEASUREMENTS

<u>Item No.</u>	<u>Performance Criteria</u>	<u>Unit of Measure</u>
22	Out-Of-Service Cleared $\geq$ 3 Hours	Percentage
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
23	Out-Of-Service Cleared $\geq$ 12 Hours	Percentage
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
24	Repair Commitments Met	Percentage
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
25	Repeat Trouble Rate w/in 30-Days of Previous Trouble	Percentage
	DS-0	
	DS-1	
	DS-3	
	Analog Loops	
	Digital Capable Loops	
26	Hi-Cap Failure Rate: Troubles Per Installed Base	Percentage
	DS-0	
	DS-1	
	DS-3	
27	Outages Due To Loop Failure: Per 100 Lines	Percentage
	Analog Loops	
	Digital Capable Loops	
28	Status Calls According to ILEC Processes	Percentage
29	Customer Affecting Maintenance Window Violations	Percentage

## Billing

30	Timeliness of Usage Billing - Usage	No. of Days
31	Billing Records Delivered in Weekly Increments w/in 2-Days - Usage	Percentage
32	Respond to Billing Inquiry w/in 24-Hours	Percentage
33	Accuracy of Payphone Rating Table	Percentage
34	ILEC End User Calls Misrated by Called-To Carrier	Percentage

This initial list of Performance Parity Measurements will have to be supplemented and expanded over time as experience with CLEC-ILEC interconnection grows and new technologies and services are introduced.

## INITIAL PERFORMANCE PARITY MEASUREMENTS

<u>Item No.</u>	<u>Performance Criteria</u>	<u>Unit of Measure</u>
<b>Operator Services</b>		
35	Mean Time To Answer	Seconds
36	Mean Hold Time	Seconds
37	Call Abandonment (Hang-up)	Percentage
38	Call Blockage	Percentage
39	Average Work Time	Min. or Sec.
<b>Directory Assistance</b>		
40	Mean Time To Answer	Seconds
41	Mean Hold Time	Seconds
42	Call Abandonment (Hang-up)	Percentage
43	Call Blockage	Percentage
44	Average Work Time	Min. or Sec.
<b>Network Performance</b>		
45	Failure Frequency of Local Interconnection Trunks	Percentage
46	Calls Blocked to Calls Attempted	Percentage
	Local	
	Toll	
	Meet Point Trunks	
<b>Interconnect/Unbundled Elements/Combinations Performance</b>		
47	SS-7 A-Link Availability	Percentage
<b>Code Opening</b>		
48	NXX Loaded and Tested Prior to LERG Effective Date	Percentage
49	MTTR For NXX Troubles	Hours
<b>Emergency Service (911)</b>		
50	ALI Database Update w/in 24-Hours	Percentage
51	Selective Router Update w/in 24-Hours	Percentage
52	ALI Database Update Accuracy	Percentage
53	Selective Router Update Accuracy	Percentage
54	MSAG System Access Response Time	Seconds
<b>Directory Listings</b>		
55	Directory Listings Database Update Completion Interval	Days
56	Directory Listings Database Update w/in 24-Hours	Percentage
57	Directory Listings Electronic Interface Availability	Percentage

This initial list of Performance Parity Measurements will have to be supplemented and expanded over time as experience with CLEC-ILEC interconnection grows and new technologies and services are introduced.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of Teleport Communications )  
Group Inc./TCG South Florida for Enforcement )  
of Section IV.C of its Interconnection Agreement )  
with BellSouth Telecommunications, Inc., and )  
Request for Relief. )  
\_\_\_\_\_ )

Docket No. \_\_\_\_\_  
Filed: February 4, 1998

**COMPLAINT OF  
TELEPORT COMMUNICATIONS GROUP INC./  
TCG SOUTH FLORIDA FOR ENFORCEMENT OF  
SECTION IV.C OF ITS INTERCONNECTION AGREEMENT  
WITH BELL SOUTH TELECOMMUNICATIONS, INC.**

Teleport Communications Group Inc. and its affiliate TCG South Florida (hereinafter referred to collectively as "TCG"), by and through undersigned counsel and pursuant to Sections 364.01, 364.03 and 364.05, Florida Statutes, and Rule 25-22.036(5), Florida Administrative Code, hereby file this Complaint against BellSouth Telecommunications, Inc. ("BellSouth") for breach of the terms of the Interconnection Agreement by and between BellSouth and TCG (the "Agreement") approved by the Commission on October 29, 1996 pursuant to Order No. PSC-96-1313-FOF-TP. BellSouth has breached the Agreement since August 12, 1997 by failing to pay TCG reciprocal compensation for the transport and termination of telephone exchange service local traffic that BellSouth sends to TCG for termination with telephone exchange service end-users that are Internet Service Providers ("ISPs"). TCG requests that the Commission: (1) determine that BellSouth has breached the Agreement by failing to pay TCG reciprocal compensation for the transport and termination of telephone exchange service local traffic originated by BellSouth's end-user customers and sent to TCG for termination with ISPs that are TCG's end-user customers; (2) enforce the Interconnection Agreement by ordering BellSouth to pay TCG for terminating such local traffic

under the reciprocal compensation provisions of the Agreement dating back to August 12, 1997; (3) make a specific finding that BellSouth's unilateral action in withholding this reciprocal compensation is an anticompetitive and unlawful abuse of BellSouth's monopoly power; and (4) grant such other relief as the Commission deems appropriate.

## **I. JURISDICTION**

1. The complete name and address of the complainant is:

Teleport Communications Group Inc.	TCG South Florida
2 Lafayette Centre	1 East Broward Boulevard
1133 Twenty-First Street, N.W.	Suite 910
Suite 400	Fort Lauderdale, FL 33301
Washington, DC 20036	(954) 453-4200 (telephone)
(202) 739-0030 (telephone)	(954) 453-4444 (telecopier)
(202) 739-0044 (telecopier)	

2. All notices, orders, pleadings, discovery and correspondence regarding this Complaint should be provided to the following on behalf of TCG:

Kenneth A. Hoffman, Esq.	Michael McRae, Esq.
John R. Ellis, Esq.	Paul Kouroupas
Rutledge, Ecenia, Underwood,	Teleport Communications Group Inc.
Purnell & Hoffman, P.A.	2 Lafayette Centre
P. O. Box 551	1133 Twenty-First Street, N.W.
Tallahassee, FL 32301	Suite 400
(850) 681-6788 (telephone)	Washington, DC 20036
(850) 681-6515 (telecopier)	(202) 739-0032 (telephone)
	(202) 739-0044 (telecopier)

3. The complete name and principal place of business of the respondent to this Complaint is:

BellSouth Telecommunications, Inc.  
150 West Flagler Street  
Suite 1910  
Miami, Florida 33130

4. Both TCG South Florida and BellSouth are authorized to provide local exchange services in Florida.

5. Pursuant to Section 252 of the Telecommunications Act of 1996 (the "Act"), TCG and BellSouth negotiated the Agreement and filed same with this Commission on July 26, 1996. Under Section III.A of the Agreement, the Agreement has a three year term beginning July 15, 1996. Under Section III.B of the Agreement, negotiations toward a new interconnection agreement are to begin no later than December 1, 1998. In accordance with Section 252(e) of the Act, the Commission approved the Agreement on October 29, 1996.<sup>11</sup> BellSouth has failed to comply with specific provisions in the Agreement as specifically outlined in this Complaint.

6. The Commission has jurisdiction to enforce the terms of the Agreement that BellSouth has breached as alleged herein. The United States Court of Appeals for the Eighth Circuit recently confirmed that pursuant to Section 252 of the Act, state commissions, like this one, "are vested with the power to enforce the terms of the agreements they approve."<sup>12</sup> The Commission also has jurisdiction to consider this Complaint pursuant to Sections 364.01, 364.03 and 364.05, Florida Statutes, Rule 25-22.036(5), Florida Administrative Code, and Order No. PSC-96-1313-FOF-TP. Moreover, Section XXV of the Agreement requires the parties to petition this Commission for a resolution of any disputes that arise as to the interpretation of the Agreement.

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<sup>11</sup> *In Re: Request for Approval of interconnection agreement between BellSouth Telecommunications, Inc. and Teleport Communications Group, pursuant to Sections 251, 252, and 271 of the Telecommunications Act of 1996*, Final Order Approving Negotiated Interconnection Agreement, Docket No. 960862-TP, issued October 29, 1996; see 96 F.P.S.C. 10:370 (1996).

<sup>12</sup> *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997).

## **II. STATEMENT OF FACTS GIVING RISE TO CONTROVERSY**

7. TCG and BellSouth provide local exchange services over their respective networks to end-user customers pursuant to the terms of the Agreement. Some of TCG's (and BellSouth's) end-user customers are business customers operating as ISPs. Typically, end-users connect to an ISP through a toll free seven-digit telephone call using local exchange service. TCG has administered reciprocal compensation arrangements since December 1995, with BellSouth. Moreover, to the best of TCG's knowledge and belief BellSouth included ISP traffic in reciprocal compensation bills submitted to TCG, and TCG paid those bills without objection.

8. On or about August 12, 1997, TCG received a letter from Ernest L. Bush of BellSouth informing TCG that BellSouth would no longer pay reciprocal compensation on local exchange traffic to and from ISPs. In accordance with the letter from Mr. Bush, BellSouth now refuses to pay reciprocal compensation for these BellSouth end-user calls terminated by TCG as required by the Agreement. A copy of Mr. Bush's letter is attached hereto as Exhibit "A".

9. BellSouth's refusal to provide reciprocal compensation for local ISP traffic originated by its end-users that terminates on TCG's network is inconsistent with BellSouth's prior payment of reciprocal compensation under the Agreement and constitutes a material and willful breach of the terms of the Agreement. BellSouth's action also violates Section 251(b)(5) of the Act which sets forth the obligation of all local exchange companies ("LEC") to provide reciprocal compensation. Moreover, BellSouth's action is inconsistent with a number of FCC and state regulatory decisions which have directly addressed this issue.



**III. THE EXPRESS TERMS OF THE AGREEMENT SUPPORT THE CONCLUSION THAT CALLS TO ISPS ARE "LOCAL TRAFFIC" SUBJECT TO RECIPROCAL COMPENSATION UNDER SECTION IV OF THE AGREEMENT**

10. TCG submits that pursuant to the terms of the Commission-approved Agreement, traffic from BellSouth's end-user customers to TCG's end-user customers that are ISPs is "Local Traffic" subject to reciprocal compensation arrangements. Section I.D of the Agreement defines "Local Traffic" as:

any telephone call that originates and terminates in the same LATA and is **billed by the originating party as a local call**, including any call terminating in an exchange outside of BellSouth's service area with respect to which BellSouth has a local interconnection arrangement with an independent LEC, with which TCG is not directly interconnected. (emphasis added).

The traffic at issue originates and terminates in the same LATA. BellSouth bills its originating end-user customers local business rates when BellSouth's customer dials an ISP, whether the ISP is served by BellSouth, TCG or another provider. Therefore, TCG submits that calls to ISPs fit well within the definition of "Local Traffic" under the Agreement.

11. It is equally clear that as Local Traffic, calls to ISPs are subject to reciprocal compensation arrangements under the Agreement. Sections IV.B and IV.C of the Agreement require BellSouth and TCG to pay reciprocal compensation to each other for all local telephone exchange traffic that originates on one company's network and terminates on the other's network in accordance with the rates set forth in Attachment B-1 of the Agreement. The Reciprocal Compensation provision in Section IV.C of the Agreement states, in pertinent part:

Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, incorporated herein by this reference.

Section IV.B of the Agreement states:

The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement.

The ISP traffic at issue is originated by a BellSouth end-user, delivered to TCG, and terminated on TCG's network. Pursuant to the Agreement, calls from BellSouth's end-user customers to TCG's end-user customers that are ISPs are subject to reciprocal compensation.

12. Nothing in the Agreement or applicable law or regulations creates a distinction pertaining to calls placed to telephone exchange service end-users which happen to be ISPs. All calls that terminate within the same LATA, regardless of the identity of the end-user, are local calls under Section 1.D of the Agreement, and reciprocal compensation is due for such calls. This includes telephone exchange service calls placed by BellSouth's customers to TCG's ISP customers.

13. BellSouth and TCG crafted a contractual definition of Local Traffic which delineated expressly what is and what is not "Local Traffic" in order to eliminate uncertainty over what type of traffic might be encompassed by the definition. If BellSouth had intended **at the time of the Agreement** to exclude what was universally viewed as local traffic calls terminated to ISP customers of TCG, it could have, and should have, sought to modify the contractual definitions. BellSouth did not.

14. Significantly, the Agreement utilizes accounting or tracking factors for percentage local usage<sup>3/</sup> and percentage interstate usage<sup>4/</sup> traffic, where it is necessary to differentiate and account for these differently rated traffic types. No similar accounting or tracking provision was

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<sup>3/</sup> Section I.G of the Agreement (Percentage of Local Usage factor).

<sup>4/</sup> Section I.F of the Agreement (Percentage of Interstate Usage factor).

placed in the Agreement for a "Percentage Internet Usage" factor for traffic terminated to an ISP. If BST truly intended to treat ISP traffic as non-local, it undoubtedly would have insisted on such a factor. BellSouth does not reconcile its alleged earlier intention with the absence of a "Percentage Internet Usage" factor necessary to carry out such a treatment of ISP traffic. As an ISP itself and a sophisticated global telecommunications corporation, BellSouth knows the indistinguishable nature of ISP traffic compared to other Local Traffic. The only explanation for the absence of such an essential factor is that **neither** of the parties expected or intended to treat ISP traffic any differently from other Local Traffic.

15. It is telling that BellSouth's new interpretation of the Agreement is inconsistent with its own practices. BellSouth charges its own ISP customers local business line rates for local telephone exchange service that enables customers of BellSouth's ISP customers to connect to their ISP by making a local phone call. When a BellSouth telephone exchange service customer places a call to an ISP within the caller's local calling area, BellSouth bills such customer for a local call pursuant to the terms of BellSouth's local tariffs regardless of whether the ISP is served by BellSouth or by TCG. BellSouth also treats the revenues associated with local exchange traffic to its ISP customers as local for purposes of interstate separations and ARMIS reports.

16. Like any contract, the BellSouth/TCG Agreement was a product of negotiations. Concessions by each party were necessary to reach the Agreement. If BellSouth is now unhappy with the negotiated contractual definition of Local Traffic in the Agreement, it has the opportunity to address this issue in future negotiations with TCG which must begin no later than December 1, 1998.

#### IV. INDUSTRY STANDARDS AND PRACTICES SUPPORT TCG'S POSITION

##### 1. The Communications Industry's Definition of the Term "Terminate" Supports TCG's Position

17. TCG maintains that calls originated by BellSouth end users to an ISP that are terminated by TCG on TCG's network, within the same LATA, clearly fall within the contractual definition of "Local Traffic" under Section I.D of the Agreement. However, to the extent the Commission believes there to be any ambiguity raised by the use of the word "terminates" in said definition, TCG submits that the definition of "service termination point" found in the Communications Standard Dictionary supports TCG's position.

18. Under Florida law, technical words in a contract are to be interpreted consistent with the understanding and practices in the industry to which they relate. Fla.Jur.2d., Contracts, §§ 159-160. A standard definition of "service termination point" is:

1. Proceeding from a network toward a user terminal, the last point of service rendered by a commercial **carrier** under applicable **tariffs**. Note 1: The service termination point usually is on the customer premises. Note 2: The customer is responsible for equipment and operation from the service termination point to end user instruments. 2. In a switched communications system, the point at which **common carrier service** ends and user-provided service begins, i.e., the interface point between the communications systems equipment and the user terminal equipment, under applicable tariffs.<sup>2</sup>

This is a telecommunications industry definition of "termination." The definition contemplates a last point of tariffed service provided by a "commercial carrier." The last point of tariffed service is provided by a commercial carrier (like TCG) to an ISP. An ISP is not a "carrier," nor does an ISP

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<sup>2</sup> Martin H. Weik, *Communications Standard Dictionary* (3d. ed. 1996), at 893 (emphasis added).

provide a tariffed service. The common carrier service ends and user-provided service begins when the call is delivered to the ISP and the ISP answers the call.

19. This communications industry definition is consistent with TCG's and the industry's understanding that the local telephone call to the ISP is distinguishable from the subsequent connection from the ISP into and through the Internet. This first segment represents the basic service leg of the Internet connection. Enhanced services are provided on the second segment. The local call -- the first connection, which is the basic service call at issue here -- is terminated at the ISP end-user premises. Both the origination and termination occur within the local calling area. In other words, the local call is completed when the ISP modem bearing the number called by the originating party "answers" the call. This local call completion is distinguishable from a long distance call, which is never *answered* at the interexchange carrier's point of presence, but only when it is forwarded through another LEC end office and the called party "answers" the call.

## **2. Industry Practice**

20. In addition to the industry understanding, the Commission can look to industry practice. As a general principle of law, common industry usage is incorporated into the parties' understanding of the technical terms in their contracts. Fla. Jur.2d, Contracts, §160. When the Agreement was negotiated, the phenomenon of Internet traffic was well known to the parties. Common industry practice was to treat those calls as local calls.

21. For example, it is significant to note that Incumbent Local Exchange Companies ("ILECs") like BellSouth have handled ISP traffic for many years -- after all, the first FCC orders relating to the fact that ISP traffic is to be treated as local are nearly fifteen years old. During that period undoubtedly many of those ISP calls involved the use of multiple ILEC networks. For

example, when a BellSouth customer called an ISP served by another ILEC in the same local calling area, this would have presented the same "reciprocal compensation" issue raised by BellSouth in connection with traffic to TCG's end-users. TCG believes, however, that ILECs have, for many years, treated such ILEC to ILEC ISP calls as Local Traffic subject to the same reciprocal compensation type arrangements as would be applied to any other Local Traffic. If BellSouth has not had in place a long-standing and systematic practice of treating these ILEC to ILEC ISP calls as other than Local Traffic, this would provide further evidence that common industry practice has been to treat these calls as Local Traffic. It was only when BellSouth faced the prospect of paying reciprocal compensation to a direct competitor rather than a "fellow ILEC" in an adjacent service territory that it decided to unilaterally adopt a different treatment of ISP traffic. In this case, BellSouth raised no objection to the treatment of ISP traffic as local traffic subject to reciprocal compensation under the Agreement until August 12, 1997, some 13 months after the Agreement had been in effect.

22. TCG submits that industry practice -- but for the recent and self-serving change of position by BellSouth and other ILECs -- supports the interpretation that calls to ISPs are Local Traffic subject to reciprocal compensation terms. Perhaps the most persuasive argument to support this point is that in all the proceedings throughout the country on this issue, the majority of the interested non-ILEC parties generally share a common general view that calls to ISPs are eligible for reciprocal compensation. And the ILECs' 180 degree change in position resulted only after they came to realize that it was in their financial interest -- and to their competitors' financial detriment -- to make this unilateral change.

V. **FLORIDA, THE FCC AND NUMEROUS OTHER STATE REGULATORY AUTHORITIES NATIONWIDE HAVE DETERMINED THIS TRAFFIC TO BE LOCAL TRAFFIC, AND BELL SOUTH'S POSITION VIOLATES THE LAW AND PUBLIC POLICY**

23. This Commission, the FCC and other state commissions have consistently determined that the traffic at issue is local in nature.

A. **Florida**

24. In Order No. 21815, issued September 5, 1989 in Docket No. 880423-TP, this Commission completed an investigation into access to the local network for providing information services by concluding, among other things, that end-user access to an ISP is local service. This decision was reached after hearing testimony and argument from a variety of parties, including BellSouth (then Southern Bell). In fact, in reaching its conclusion that ISP traffic is local, the Commission relied in part on testimony from BellSouth's witnesses. In its order, the Commission cited BellSouth testimony that "calls to a VAN (value added network) which use the local exchange lines for access are considered local even though communications take place with data bases or terminals in other states" and "such calls should continue to be viewed as local exchange traffic."<sup>6/</sup> The Order also quoted the BellSouth witness who testified that "connections to the local exchange network for the purpose of providing an information service should be treated like any other local exchange service."<sup>7/</sup>

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<sup>6/</sup> Order No. 21815, at 24 (emphasis added); 89 F.P.S.C. 9:30.

<sup>7/</sup> Order 21815, at 25; 89 F.P.S.C. 9:31.

## B. The FCC

25. This Commission's determination in Docket No. 880423-TP is consistent with decisions of the FCC. Under current FCC rules, traffic to an ISP is local traffic. The FCC has repeatedly affirmed the rights of ISPs to employ local exchange services, under *intrastate* tariffs, to connect to the public switched telecommunications network.<sup>8/</sup> The mere fact that an ISP may enable a caller to access the Internet does not alter the legal status of a local connection between the customer and the ISP. The local call to the telephone exchange service of an ISP is a separate and distinguishable transmission from any subsequent Internet connection enabled by the ISP.

26. The FCC's recent Report and Order on Universal Service and First Report and Order on Access Charge Reform affirm this fact.<sup>9/</sup> In the *Universal Service Order*, the FCC determined that Internet access consists of severable components: the connection to the ISP via voice grade access to the public switched network and the information service subsequently provided by the ISP.<sup>10/</sup> In other words, the first component is a simple local exchange telephone call. Such a call is eligible for reciprocal compensation under the Agreement.

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<sup>8/</sup> *Amendments to Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, para. 2 n. 8 (1988). In its First Report and Order regarding Access Charge Reform, the Commission reaffirmed this position explicitly and declined to impose access charges on ISPs. *In the Matter of Access Charge Reform*, First Report and Order, CC Docket No. 96-262 (rel. May 17, 1997) ("Access Charge Reform Order"), ¶¶344-348.

<sup>9/</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45 (rel. May 8, 1997) ("*Universal Service Order*"); *In the Matter of Access Charge Reform*, First Report and Order, CC Docket No. 96-262 (rel. May 17, 1997) ("*Access Charge Reform Order*").

<sup>10/</sup> *Universal Service Order*, paras. 83, 788-789.



27. In the *Access Charge Reform Order*, the FCC declined to allow LECs to assess interstate access charges on ISPs.<sup>11/</sup> Indeed, the FCC unambiguously characterized the connection from the end-user to the ISP as local traffic: “To maximize the number of subscribers that can reach them *through a local call*, most ISPs have deployed points of presence.”<sup>12/</sup>

28. In the FCC’s *Non-Accounting Safeguards Order*, the Commission determined that the local call placed to an ISP was separate from the subsequent information service provided.<sup>13/</sup> The severability of these components was key to the FCC’s conclusion that if each was provided, purchased, or priced separately, the combined transmissions did not constitute a single interLATA transmission.<sup>14/</sup> There can be no doubt that at this time the FCC does not consider the local exchange call to an ISP to be an interstate or international communication - - to the contrary, the FCC views such a call to be an intrastate call for jurisdictional purposes.

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<sup>11/</sup> *Access Charge Reform Order*, paras. 344-348.

<sup>12/</sup> *Id.*, at n. 502 (emphasis added).

<sup>13/</sup> *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149 (rel. Dec. 24, 1996), para. 120.

<sup>14/</sup> *Id.*

29. Although the FCC currently is examining the issue of the use of the public switched network by ISPs, it has not altered the existing rules.<sup>15/</sup> Moreover, any alteration at this time by the FCC would not affect the terms of TCG's Interconnection Agreement with BellSouth.<sup>16/</sup>

### C. Other State Commissions

30. Several state commissions which have addressed this issue have reached the conclusion that calls from an end-user to an ISP are local traffic subject to reciprocal compensation.

31. The Virginia State Corporation Commission, in response to a petition filed by Cox Virginia Telecom, Inc., determined that calls to ISPs are local and that the presence of an Alternative Local Exchange Carrier ("ALEC") does not change the local nature of the call.<sup>17/</sup> When New York Telephone ("NYT") unilaterally withheld payment of reciprocal compensation for local exchange

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<sup>15/</sup> *Notice of Inquiry, Usage of the Public Switched Network by Information Service and Internet Access Providers*, F.C.C., CC Docket 96-263 (released Dec. 24, 1996) ("NOI Proceeding"); see also *In the Matter of Request by ALTS for Clarification for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic*, F.C.C., CCB/CPD 97-30 (F.C.C.) ("ALTS Proceeding") (decision pending).

<sup>16/</sup> In the ALTS proceeding, the Association for Local Telecommunication Services ("ALTS") advocates treating ISP traffic as interstate. However, even if the FCC were to find in the ALTS Proceeding that ISP traffic should be treated as interstate, that decision would have no bearing on this Complaint. This Commission previously has held that it will not modify a negotiated, Commission-approved interconnection agreement based on a post-agreement change in law which potentially impacts a provision in the agreement. In Re: Request for approval of interconnection agreement between Metropolitan Fiber Systems of Florida, Inc. and United Telephone Company of Florida, pursuant to the Federal Telecommunications Act of 1996, 97 F.P.S.C. 2:721 (Order No. PSC-97-0240-FOF-TP issued February 28, 1997). Thus, even if the FCC were to respond to the ALTS petition by determining that calls directed to ISPs are not local traffic, such a ruling would have no bearing on the fact that BellSouth and TCG negotiated a definition of Local Traffic in this Agreement which includes such calls.

<sup>17/</sup> *Petition of Cox Virginia Telecom, Inc. for Enforcement of Interconnection Agreement with Bell Atlantic-Virginia, Inc. and Arbitration Award for Reciprocal Compensation for Termination of Local Calls to Internet Service Providers*, Case No. PUC970069 (Va. State Corp. Comm'n Oct. 27, 1997). Bell Atlantic has appealed this decision to the Virginia Supreme Court.

traffic delivered to ISPs, the New York Public Service Commission ordered NYT to continue to pay reciprocal compensation for such traffic.<sup>18/</sup> Following the filing of a similar complaint the Maryland Public Service Commission ruled that local exchange traffic to an ISP is local in nature and eligible for reciprocal compensation and ordered Bell Atlantic-Maryland, Inc. to pay reciprocal compensation previously withheld.<sup>19/</sup> Likewise, in response to a petition by Southern New England Telephone Company, the Connecticut Department of Public Utility Control issued a Decision holding that local exchange traffic to ISPs is local in nature and eligible for reciprocal compensation.<sup>20/</sup> When US West asserted a similar argument (that traffic originated by or terminated to enhanced service providers should be exempted from reciprocal compensation arrangements under Interconnection

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<sup>18/</sup> *Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic*, Case 97-C-1275, Order Denying Petition and Instituting Proceeding (N.Y.P.S.C. July 17, 1997). The Order also instituted a proceeding to consider issues related to Internet access traffic. Comments and Reply Comments have been filed.

<sup>19/</sup> Letter dated September 11, 1997 from Daniel P. Gahagan, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Esq., Bell Atlantic-Maryland, Inc. On October 1, 1997, the Commission confirmed that decision rejecting a BA-MD Petition for Reconsideration. Bell Atlantic has appealed this decision to the Circuit Court of Montgomery County, Maryland.

<sup>20/</sup> *Petition of the Southern New England Telephone Company for a Declaratory Ruling Concerning Internet Services Provider Traffic*, Docket No. 97-05-22, Decision (Conn. D.P.U.C. Sept. 17, 1997).

Agreements) the states of Arizona,<sup>21/</sup> Colorado,<sup>22/</sup> Minnesota,<sup>23/</sup> Oregon,<sup>24/</sup> and Washington<sup>25/</sup> all declined to treat traffic to ISPs any differently than other local traffic.

32. TCG submits that the persuasive authority of the above-referenced state commissions is consistent with this Commission's historic treatment of services provided to ISPs. The consistency in these holdings supports the conclusion that the term Local Traffic, as used in the Agreement and as understood by those practicing within the industry and by those regulatory bodies

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<sup>21/</sup> *Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions with US WEST Communications, Inc., Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996*, Opinion and Order, Decision No. 59872, Docket No. U-2752-96-362 *et al.* (Arizona Corp. Comm. Oct. 29, 1996) at 7.

<sup>22/</sup> *Petition of MFS Communications Company, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions with US WEST Communications, Inc.*, Decision Regarding Petition for Arbitration, Docket No. 96A-287T, at 30 (Col. PUC Nov. 5, 1996). The Colorado Public Utilities Commission has since affirmed its rejection of US West's efforts to exclude ISP traffic from reciprocal compensation by rejecting such a provision in a proposed US West tariff. *The Investigation and Suspension of Tariff Sheets Filed by U S West Communications, Inc. With Advice Letter No. 2617, Regarding Tariffs for Interconnection, Local Termination, Unbundling and Resale of Services*, Docket No. 96A-331T, Commission Order, at 8 (Colo. P.U.C. July 16, 1997).

<sup>23/</sup> *Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCI metro Access Transmission Services, Inc., and MFS Communications Company for Arbitration with US WEST Communications, Inc., Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, Order Resolving Arbitration Issues, Docket Nos. P-442, 421/M-96-855, P-5321, 421/M-96-909, P-3167, 421/M-96-729 (Minn. PUC Dec. 2, 1996) at 75-76.

<sup>24/</sup> *Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996*, Commission Decision, Order No. 96-324 (Ore. PUC Dec. 9, 1996) at 13.

<sup>25/</sup> *In the Matter of Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. and US WEST Communications, Inc., Pursuant to 47 USC § 252*, Arbitrator's Report and Decision, Docket No. UT-960323 (Wash. Utils. and Transp. Comm. Nov. 8, 1996) at 26.

overseeing the industry at the time the Agreement was entered into, includes calls from end-users to ISPs.

**VI. BELLSOUTH'S POSITION IS ANTICOMPETITIVE AND IS INCONSISTENT WITH ITS RECENT APPLICATION TO PROVIDE INTERLATA SERVICES IN FLORIDA**

33. The totally untenable nature of BellSouth's change of position is underscored by the fact that if such traffic were deemed interstate rather than local, BellSouth's provision of interLATA service to a BellSouth customer connected with BellSouth's own ISP would be a violation of Section 271 of the Act, which presently prevents BellSouth from providing interLATA service in Florida.<sup>26/</sup> Undoubtedly, BellSouth does not intend for this result to occur.

34. BellSouth's position also demonstrates anticompetitive behavior. Any carrier terminating calls to an ISP incurs costs in terminating such calls (which are the same costs incurred in terminating calls to any other end-user). Since BellSouth controls most of the originating traffic within its territory, its newly announced position would force TCG and other new entrants to terminate these calls without compensation. The inevitable result would be that no ALEC would seek to furnish service to an ISP, since providing that service would result in uncompensated termination costs. This would leave BellSouth with a *de facto* monopoly over ISP end-users, a state of affairs that was not intended by Section 271 and other provisions of the Act.

35. Recent filings by ISPs in the ALTS Proceeding underscore the anticompetitive impact of BellSouth's action on ALECs that serve ISPs. Simply stated, ISPs believe that they will be unable

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<sup>26/</sup> *In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Order No. PSC-97-1459-FOF-TL issued November 19, 1997 in Docket No. 960786-TL.

to obtain service from ALECs if BellSouth succeeds in withholding Reciprocal Compensation for calls to ISPs. As a participant in that proceeding, BellSouth is well aware of this position.

36. Further aggravating this anticompetitive effect, BellSouth, through BellSouth.Net, is now offering its own Internet access service to consumers. By gaining monopoly power over local exchange service to ISPs and increasing their costs for network access, BellSouth will be in a position to drive competing ISPs out of the local market, thereby leaving BellSouth with a *de facto* monopoly over access to the Internet.

37. When the FCC recently rejected Ameritech's application to provide in-region interLATA service for the state of Michigan pursuant to Section 271 of the Act, it made findings which are applicable to this Complaint. One such finding is that in order for a Bell Operating Company's ("BOC") application under Section 271 to be granted, "... there must be just and reasonable reciprocal compensation for the transport and termination of calls between an incumbent and a new entrant's network."<sup>27/</sup> The change in position taken by BellSouth with regard to ISP traffic under the Agreement is neither just nor reasonable, and would support a decision to preclude BellSouth from obtaining Section 271 authority.

38. Further, in its "public interest" review of Ameritech's Section 271 application, the FCC stated that in such cases it will consider whether the BOC has engaged in discriminatory or other anticompetitive conduct or has failed to comply with state and federal telecommunications regulations.<sup>28/</sup> A BOC's good faith compliance with its obligations under the Act is essential to the

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<sup>27/</sup> *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-region InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, ¶ 293 (F.C.C. released Aug. 19, 1997).

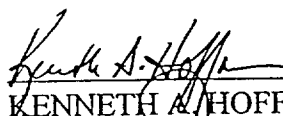
<sup>28/</sup> *Id.* at ¶ 397.

development of local competition, and BellSouth plainly is negating its ability to obtain Section 271 authority by taking the unlawful and anticompetitive position it has adopted regarding reciprocal compensation for local exchange traffic to end-users who happen to be ISPs.

## VII. REQUEST FOR RELIEF

WHEREFORE, TCG requests that the Commission: (1) determine that BellSouth has breached the Agreement by failing to pay TCG reciprocal compensation for the transport and termination of telephone exchange service local traffic originated by BellSouth's end-user customers and sent to TCG for termination with ISPs that were TCG's end-user customers; (2) enforce the Interconnection Agreement by ordering BellSouth to pay TCG for terminating such local traffic under the reciprocal compensation provisions of the Agreement dating back to August 12, 1997; (3) make a specific finding that BellSouth's unilateral action in withholding this reciprocal compensation is an anticompetitive and unlawful abuse of BellSouth's monopoly power; and (4) grant such other relief as the Commission deems appropriate.

Respectfully submitted,



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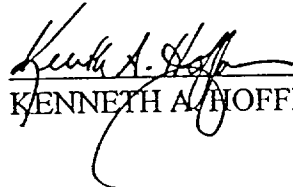
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the Complaint of Teleport Communications Group Inc./TCG South Florida against BellSouth Telecommunications, Inc. was furnished by U. S. Mail this 4<sup>th</sup> day of February, 1998 to the following:

Robert G. Beatty, Esq.  
Nancy B. White, Esq.  
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Tallahassee, FL 32301

Martha C. Brown, Esq.  
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KENNETH A. HOFFMAN, ESQ.

ISP.2



Ex #17



BellSouth Telecommunications, Inc. 404 927-7150  
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Ernest L. Bush  
Assistant Vice President -  
Regulatory Policy & Planning

SN91081223

August 12, 1997

To: All Competitive Local Exchange Carriers  
Subject: Enhanced Service Providers (ESPs) Traffic

The purpose of this letter is to call to your attention that our interconnection agreement applies only to local traffic. Although enhanced service providers (ESPs) have been exempted from paying interstate access charges, the traffic to and from ESPs remains jurisdictionally interstate. As a result, BellSouth will neither pay, nor bill, local interconnection charges for traffic terminated to an ESP. Every reasonable effort will be made to insure that ESP traffic does not appear on our bills and such traffic should not appear on your bills to us. We will work with you on a going forward basis to improve the accuracy of our reciprocal billing processes. The ESP category includes a variety of service providers such as information service providers (ISPs) and internet service providers, among others.

On December 24, 1996, the Federal Communications Commission (FCC) released a Notice of Proposed Rule Making (NPRM) on interstate access charge reform and a Notice of Inquiry (NOI) on the treatment of interstate information service providers and the Internet, Docket Nos. 96-262 and 96-263. Among other matters, the NPRM and NOI addressed the information service provider's exemption from paying access charges and the usage of the public switched network by information service providers and internet access providers.

Traffic originated by and terminated to information service providers and internet access providers enjoys a unique status, especially call termination. Information service providers and internet access providers have historically been subject to an access charge exemption by the FCC which permits the use of basic local exchange telecommunications services as a substitute for switched access service. The FCC will address this exemption in the above-captioned proceedings. Until any such reform affecting information service providers and internet access providers is accomplished, traffic originated to and terminated by information service providers and internet access providers is exempt from access charges. This fact, however, does not make this interstate traffic "local", or subject it to reciprocal compensation agreements.

Please contact your Account Manager or Marc Cathey (205-977-3311) should you wish to discuss this issue further. For a name or address change to the distribution of this letter, contact Ethelyn Pugh at 205-977-1124.

Sincerely,

A handwritten signature in cursive script that reads "E. L. Bush".

